

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

ANDREW F. DUFFY,)	
)	
Plaintiff,)	
vs.)	NO. CIV-09-608-D
)	
SETH THOMPSON, et al.,)	
)	
Defendants.)	

ORDER

Before the court is the Report and Recommendation [Doc. No. 8] of Magistrate Judge Gary M. Purcell, to whom this 42 U. S.C. §1983 action was referred for initial proceedings in accordance with 28 U.S.C. §636(b)(1)(B). Plaintiff, a state prisoner appearing *pro se*, sought *in forma pauperis* status. By Order of June 16, 2009 [Doc. No. 7], the Magistrate Judge granted his request to proceed without full prepayment of the filing fee and directed Plaintiff to pay an initial partial filing fee of \$5.27. The Magistrate Judge directed him to do so no later than July 6, 2009. Plaintiff was also advised that he would be required to make monthly payments consisting of 20 percent of his preceding month's income as credited to his prison account(s) until the filing fee was fully paid. Plaintiff was cautioned that failure to pay the initial \$5.27 by the stated deadline could result in dismissal of this action.

Because Plaintiff failed to comply, the Magistrate Judge filed the Report and Recommendation in which he recommended dismissal of the action without prejudice. Plaintiff was advised of his right to object, and the deadline for doing so.

On July 21, 2009, the Court Clerk received a letter [Doc. No. 9] from Plaintiff stating that he did not receive the Magistrate Judge's June 16, 2009 Order granting his motion to proceed *in*

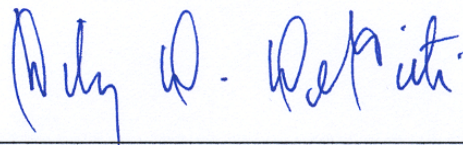
forma pauperis and requiring the \$5.27 initial filing fee payment by July 6. Plaintiff stated his belief that he was not receiving his mail, and asked that this case not be dismissed. However, Plaintiff did not enclose the required \$5.27 payment. Instead, he stated that he would pay the amount when funds were available.

To date, Plaintiff has not paid the \$5.27 fee, nor has he submitted any payment. The Court notes that the determination of the \$5.27 initial fee was based on the Magistrate Judge's review of the account information provided, as required by the applicable procedure for assessing such fees. The Court agrees that the amount is properly calculated.

Plaintiff's failure to pay the fee warrants dismissal of this action. The fact that he contends he did not receive the Order granting *in forma pauperis* status does not excuse his failure to pay the \$5.27, as he obviously became aware of that amount when he received the Report and Recommendation. He has taken no action to pay the required initial filing fee.

Accordingly, the Court agrees with the Magistrate Judge that this action should be, and is hereby, dismissed for failure to pay the requisite initial filing fee. The Report and Recommendation [Doc. No. 8] is adopted as though fully set forth herein, and this action is DISMISSED without prejudice to the filing of a new action.

IT IS SO ORDERED this 29th day of October, 2009.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE